EXHIBIT 23

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

Page 1

1   UNITED STATES DISTRICT COURT

2   NORTHERN DISTRICT OF CALIFORNIA

3   SAN FRANCISCO DIVISION

4

5   ORACLE AMERICA, INC.,   )
)
6   Plaintiff,   )
)
7   vs.   )Case No.
)CV 10-03561 WHA
8   )
      GOOGLE, INC.,   )
9   )
                    Defendant.   )
10   _____)

11

12   HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

13

14   VIDEOTAPED DEPOSITION OF

15

                      DONALD SMITH
16   _____

17   November 20, 2015

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21   Job No. CS2187585

22

23   REPORTED BY:

24

25   JULIE ANNE ZEIGLER, RPR, CSR 9750

1   MS. LEWIS-GRUSS: Objection to the form.
2   THE WITNESS: This goes back to the Sun era,
3 right, and so --
4 BY MR. MULLEN:
5   Q.   I'm just asking for information from you from
6 the recent time period.
7   A.   I understand, but it was well-known that there
8 was a dispute there, and that it was well-known -- as a
9 third party, and it's my position and testimony here as
10 Oracle -- that that was infringing, and it was
11 well-known that it was.
12   Q.   Are you familiar with the GNU Classpath
13 Project?
14   A.   I am, yes.
15   Q.   How are you familiar with that?
16   A.   Again, as part of the preparation for this
17 case.
18   Q.   And who did you talk to about GNU Classpath?
19   A.   So we covered this at the very, very, very
20 beginning of the morning. So this was as it relates to
21 my conversation with Mark Wayne, who was a Sun employee
22 at the time that that was going on. He conveyed the
23 facts of that to me such that I could provide the
24 testimony today.
25   Q.   And what did Mr. Wayne convey to you

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1 specifically?
2   A.   So he conveyed to me the fact that Sun was
3 aware of the GNU Classpath Project, had been monitoring
4 it closely, had been -- saw it largely as an academic
5 research-type effort; that it had people in contact with
6 those that were working on it doing the development;
7 that Sun at that time was considering open sourcing Java
8 itself and was looking at that as a way to kind of
9 manage that in a diplomatic way, or in a simple way, I
10 guess to put it; and that there was only one case that
11 that they were ever aware of where that code was used
12 commercially and not just as a research project; and
13 that was the case that we talked about very early this
14 morning, which was a -- I don't know if it's a standards
15 body or specification body in South Korea called WIPI,
16 W-I-P-I. And as Sun became aware of that, they
17 immediately engaged; and, as I understand it, there was
18 even government involvement between the United States
19 and South Korea. And so one interesting -- so one thing
20 about that conversation was that South Korea was using
21 GNU Classpath as "oh, we just got the code from there,"
22 but there was actually additional code outside of the
23 Java SE specification -- sorry, I forget exactly which,
24 I think it was MIPS-related code. So it was unclear
25 whether that was just an excuse for doing what they had

1 done or not, but what I do know is that it was resolved
2 commercially. A company called ETRI commercially
3 licensed that code, and so that, you know, helped fund
4 Sun's ongoing Java development that way. And that,
5 ultimately, Sun open sourced Java under a GPL license,
6 and so that completely obviated anything around GNU
7 Classpath, and it was just left. All the people that
8 were involved in that particular research project just
9 started working in OpenJDK.
10   Q.   Are you aware of Oracle ever using GNU
11 Classpath code in any of its products?
12   MS. LEWIS-GRUSS: Object to form; and to the
13 extent -- and this is outside the scope of the 30(b)(6)
14 topics.
15   THE WITNESS: So I'm not aware. And again,
16 after 2006, all that source code was available in
17 OpenJDK, and so there would have been no need for Oracle
18 to ever use that in its product.
19 BY MR. MULLEN:
20   Q.   So it's your testimony that there's no
21 product at Oracle that uses code from GNU Classpath?
22   MS. LEWIS-GRUSS: Again, this is outside the
23 scope of the 30(b)(6).
24   MR. MULLEN: I think this is directly within
25 the scope of Topic 2.

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1   MS. LEWIS-GRUSS: I disagree with that. I
2 think that Topic 2 is more narrow than your question;
3 and I also object to the form.
4   THE WITNESS: So I have two parts to the
5 answer there. So number one is I'm not aware of any
6 Oracle product that is using GNU Classpath; and to the
7 degree that a product existed as of 2006, it would be
8 irrelevant because all that same source code is
9 available under the GPL and more.
10 BY MR. MULLEN:
11   Q.   Are you aware whether GNU Classpath still
12 exists?
13   A.   I am not aware if it still exists. I would
14 not be surprised if it was available somewhere, but
15 again, as of 2006, by having OpenJDK available under the
16 same license, it wouldn't matter. It would -- the GPL
17 permits somebody to come to OpenJDK today and take some
18 or all of the source code and put it somewhere else
19 under the GPL, so it would be no different than that.
20   Q.   Does the GPL Version 2 license prohibit --
21 let me say it this way. Does the GPL license allow
22 commercial use?
23   A.   So you -- you can use -- subject to the terms
24 and conditions of the GPL, you can create commercial
25 products, yes.